

STATE OF MICHIGAN
COURT OF APPEALS

WAYNE COUNTY SHERIFF'S LOCAL 502,
SERVICE EMPLOYEES INTERNATIONAL
UNION,

UNPUBLISHED
April 25, 2006

Plaintiff-Appellee,

v

COUNTY OF WAYNE,

No. 259327
Wayne Circuit Court
LC No. 04-421728-CK

Defendant-Appellant.

Before: Markey, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

Defendant appeals as of right from an order granting summary disposition for plaintiff.

I. FACTS

The parties' dispute arose from a disagreement regarding interpretation of the parties' collective bargaining agreement (CBA) concerning the accumulation of leave days. The arbitrator concluded, in part, that the CBA did not limit the number of bonus leave days that could be accumulated. Plaintiff filed suit requesting entry of an order requiring defendant to establish a separate bank to track bonus leave days as a purported enforcement of the arbitrator's award. We reverse and remand for entry of an order dismissing this case because the relief sought by plaintiff was not clearly and specifically awarded by the arbitrator.

II. STANDARD OF REVIEW

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Collins v Comerica Bank*, 468 Mich 628, 631; 664 NW2d 713 (2003). However, judicial review concerning enforcement of an arbitration award is narrowly circumscribed. *Lenawee Co Sheriff v Police Officers Labor Council*, 239 Mich App 111, 117; 607 NW2d 742 (1999). With regard to labor arbitration, this Court must determine whether an arbitration award was beyond the arbitrator's contractual authority as exclusively derived from the parties' contract. *Id.*, 118 (citations omitted). This Court "may not review an arbitrator's factual findings or decision on the merits[,] . . . [but] may only decide whether the arbitrator's award 'draws its essence' from the contract." *Id.* (citations omitted). "In other words, an arbitrator may not act on his own sense of personal justice, but is confined to interpretation and application of the agreement." *Id.*, 119.

In addition, whether an arbitrator incorrectly interprets a contract is irrelevant. *Michigan State Employees Ass'n v Dep't of Mental Health*, 178 Mich App 581, 584; 444 NW2d 207 (1989).

III. ANALYSIS

Defendant first argues that the trial court lacked jurisdiction to entertain plaintiff's complaint under MCR 2.116(C)(4) (court lacks jurisdiction over subject matter) and MCR 2.116(C)(7) (claim is barred, in relevant part, by agreement to arbitrate) reasoning that the award provides that the arbitrator would maintain jurisdiction for purposes of interpreting the award. We agree that the trial court lacked jurisdiction to resolve the present dispute.

A trial court has the authority to enforce an arbitration award including the authority to determine the meaning of an award. *Staniszewski v Grand Rapids Packaging Corp*, 125 Mich App 97, 99; 336 NW2d 10 (1983). In that regard, a court may interpret the award and fully effectuate it. *Id.* However, a court does not have authority to perform fact-finding or the authority to fashion its own remedy not available under the award. *Service Employees Int'l Union Local 466M v Saginaw*, 263 Mich App 656, 663-664; 689 NW2d 521 (2004).

Here, plaintiff filed suit requesting, in part, that the trial court order defendant to establish a separate bank to track bonus leave days. However, the arbitrator's award did not clearly and specifically require defendant to do so. Rather, the arbitration award essentially sets forth certain principles regarding accumulation of annual leave by the relevant employees of defendant represented by plaintiff, including principles regarding bonus annual leave awarded for non-use of sick leave. We recognize that plaintiff apparently views the establishment of a "separate bank" as practically necessary to comply with the arbitration award. But this is simply not evident from the face of the award or the arbitrator's opinion. In this regard, this Court has quoted with apparent approval from *Armco Employees Independent Federation, Inc v Armco Steel Co*, 65 F3d 492, 498 (CA 6, 1995), that a court may "'enforce an arbitrator's clear and specific award,' but could not 'adjudicate the merits of a contingent claim created by a past award.'" *Service Employees, supra* at 663. In this case, the arbitration award does not clearly and specifically require the creation of a separate bank. Rather, plaintiff effectively advances a contingent claim that defendant's failure after entry of the arbitration award to create a separate bank amounts to a failure to comply with the award. The trial court lacked jurisdiction to resolve this claim which would require extended interpretation of the arbitration opinion and award rather than merely enforcing a clear and specific arbitration award. Instead, plaintiff should have either sought further interpretation of the award from the arbitrator as contemplated by the award itself or filed a new grievance under the CBA.

In light of the above analysis we need not reach defendant's argument that plaintiff's claim was barred by laches.

We reverse and remand for entry of an order dismissing this case for lack of jurisdiction. We do not retain jurisdiction.

/s/ Jane E. Markey

/s/ Bill Schuette

/s/ Stephen L. Borrello